

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ALLSTATE INSURANCE COMPANY, et al.,

2:10-cv-02205-APG-NJK

PETER MARIO BALLE, D.C., et al.,

ORDER

Defendants

16 Before the Court is Plaintiffs' Motion for Fees and Costs Pursuant to the Court Order
17 (Docket. No. 258) Granting Sanctions for Motion to Compel (Docket No. 260). The Court has
18 considered Plaintiffs' Motion (Docket No. 260), Defendant Accident Injury Medical Center
19 Inc.'s Opposition and Counter Motion for Reconsideration (Docket No. 264), the Joinder to the
20 Response filed by Defendant Peter Mario Balle (Docket No. 269), and Plaintiffs' Reply (Docket
21 No. 278).

BACKGROUND

I. Motion for Protective Order (#239)

24 On May 16, 2013, thirty days before the close of discovery,¹ Defendants noticed seven
25 depositions, four of which were 30(b)(6) depositions. On June 10, 2013, the Court allowed
26 discovery to continue solely for the purpose of conducting the noticed depositions. On June 13,

¹The discovery cut-off date as of May 16, 2013, was June 16, 2013. The current discovery cut-off date is September 16, 2013.

1 2013, Plaintiffs sent Defendants' counsel a letter objecting to the substance of the Rule 30(b)(6)
 2 depositions.

3 On June 21, 2013, the parties met and conferred on the dispute.² The parties were not able
 4 to reach a resolution. Accordingly, Plaintiffs filed a motion for protective order on June 28, 2013.

5 On July 12, 2013, the Court held a motion hearing on the Motion for Protective Order
 6 and, after considering the parties' briefs and the arguments and representations made during the
 7 hearing, the Court granted in part and denied in part Plaintiffs' Motion. Docket No. 258.

8 **II. Motion to Compel (#242)**

9 On January 18, 2013, Plaintiffs propounded on AIM a Notice of Taking Deposition
 10 pursuant to Fed.R.Civ.P. 30(b)(6). The Notice set forth 25 categories upon which the person
 11 most knowledgeable was required to testify and 26 categories of documents which AIM was
 12 required to produce for copying and examination. On February 22, 2013, AIM produced Ms.
 13 Cecilia Soares as its person most knowledgeable for the deposition. Soares is a Medical Assistant
 14 for AIM who also provides front desk and billing support. However, according to Plaintiffs, it
 15 became apparent during the deposition that Soares was neither the person most knowledgeable
 16 nor adequately prepared with proper documents for the deposition. The deposition lasted
 17 approximately 4 hours.

18 On February 26, 2013, Plaintiffs filed a Motion to Compel, Docket No. 194, seeking an
 19 order requiring AIM to produce a new/proper 30(b)(6) witness for Plaintiffs to depose.
 20 Specifically, Plaintiffs sought to depose Dr. Peter Mario Balle as a 30(b)(6) witness.³ On April
 21 26, 2013, the Court denied Plaintiffs' Motion to Compel, without prejudice, for failure to
 22 properly meet and confer. Docket No. 206.

23 On May 2, 2013, the parties met and conferred for an hour and a half, after which
 24 Plaintiffs' counsel believed the parties agreed that AIM would work to make Soares more

25
 26 ²The delay in holding the meet and confer was due to the fact that both Plaintiffs' and
 27 Defendants' counsel were in trial.

28 ³Throughout her deposition, Soares indicated that Dr. Peter Mario Balle would likely have
 the answers to many of Plaintiffs' questions.

1 familiar with the noticed topic areas and competent to testify to those areas at a subsequent
 2 deposition.⁴ Accordingly, Plaintiffs re-noticed the AIM Rule 30(b)(6) deposition to occur on June
 3 11, 2013.⁵ AIM received that deposition notice on May 17, 2013. Other than the date of the
 4 deposition, the notice was identical to the notice served on January 18, 2013.

5 On June 10, 2013, at a hearing before this Court, and the day before the deposition was
 6 set to occur, AIM's counsel informed Plaintiffs' counsel that it would not produce a 30(b)(6)
 7 witness at the deposition. This was the first time Plaintiffs' counsel was made aware that the
 8 deposition would not occur.⁶

9 On either June 19, or June 20, 2013, the parties held another meet and confer. AIM
 10 indicated that it would not produce a 30(b)(6) witness. According to Plaintiffs, there was no
 11 explanation at that time, but AIM said it would provide a reason in writing. According to AIM, it
 12 stated that it would not produce a 30(b)(6) witness without leave of court, because their 30(b)(6)
 13 witness had already been deposed in this case. On June 24, 2013, AIM sent an email indicating
 14 that it would not produce a 30(b)(6) witness without leave of court, because their 30(b)(6)
 15 witness had already been deposed in this case. According to AIM, the email confirmed that their
 16 position had not changed. According to Plaintiffs, this was the first time AIM explained why it
 17 would not produce a 30(b)(6) witness.

18 On July 1, 2013, Plaintiffs filed an Emergency Motion to Compel. Docket No. 242.
 19 Plaintiffs sought a court order requiring AIM to produce a 30(b)(6) witness for the categories
 20 identified in both the January 18, 2013, and the May 17, 2013, deposition notices and all
 21 documents responsive to the request for production accompanying the deposition notices. AIM

22
 23 ⁴According to AIM's counsel, she did not agree to educate and produce Soares for further
 24 deposition; rather, she indicated that she would discuss that option with her clients.

25 ⁵Plaintiffs' counsel emailed AIM's counsel on May 14, 2013, to try to find a date for the
 26 deposition that would work for both parties, but he received no response.

27 ⁶While Plaintiffs' counsel was en route to the hearing on June 10, 2013, his staff called to
 28 confirm the deposition per its agreement with the court reporter's office. It was at that time that
 AIM's counsel first indicated the deposition would not be going forward. AIM's counsel's staff did
 not provide a reason why the deposition would not occur and Plaintiffs' counsel was not informed
 of this conversation until after the hearing.

1 objected on the grounds that it already produced a 30(b)(6) witness and, according to AIM, the
 2 categories noticed by Plaintiffs were overly broad.⁷

3 Plaintiffs also sought a full 7 hours of deposition time with the qualified 30(b)(6) witness
 4 and all costs and fees associated with preparing for and attending the February 22, 2013, and
 5 June 11, 2013, depositions as well as the costs and fees associated with preparing the motion to
 6 compel.

7 On July 12, 2013, the Court held a hearing on the Motion to Compel (#242). After
 8 considering the parties' briefs and the arguments and representations made during the hearing,
 9 the Court granted the Motion to Compel. Docket No. 258. The Court ordered Defendants to
 10 produce a proper 30(b)(6) witness for a full seven hours of deposition and ordered Plaintiffs to
 11 file a document with the Court indicating which topics had already been responded to by Soares.
 12 See Docket No. 258.

13 **III. Motion for Fees and Costs Pursuant to Court Order (#258) Granting Sanctions
 14 (#260)**

15 At the July 12, 2013, hearing, because the Court granted the Motion to Compel, the Court
 16 granted Plaintiffs' request for sanctions under Rule 37. The Court instructed Plaintiffs to submit
 17 a motion to the Court which specified all sanctions sought, as well as documentation for those
 18 sanctions. Thereafter, Defendants had one week to file any objections.

19 On July 19, 2013, Plaintiffs filed the present Motion for Attorney's Fees. Therein,
 20 Plaintiffs indicate that they seek costs and fees associated with (a) the February 22, 2013,
 21 deposition at which Soares was not a proper 30(b)(6) witness; (b) the meet and confer that took
 22 place on May 2, 2013, which attempted to resolve the improper 30(b)(6) witness issue; (c) the
 23 June 11, 2013, scheduled deposition which was canceled at the last minute; and (d) the Motion to
 24 Compel which was brought as a result of AIM's decision not to produce a 30(b)(6) witness for
 25 that deposition. Plaintiffs outline their costs and fees, indicating that they seek a total of
 26 \$7,482.10 from Defendant AIM as well as its counsel, Karen Ross, individually.

27 On July 26, 2013, Defendant AIM filed its Opposition to Plaintiffs' Motion for Fees and

28 ⁷Defendants had not previously complained that the categories were overly broad.

1 Costs Pursuant to Court Order Granting Sanctions and Counter Motion for Reconsideration of
2 Order Granting Sanctions. Docket No. 246. AIM argues that the February 22, 2013, deposition
3 was at least partially productive and the June 11, 2013, deposition was postponed due to the
4 Courts' order at the June 10, 2013, hearing. On July 31, 2013, Defendant Peter Mario Balle filed
5 a joinder to this Response and Counter Motion. Docket No. 269.

6 Plaintiffs filed their Reply on June 5, 2013. Docket No. 278.

7 **DISCUSSION**

8 **I. Counter Motion for Reconsideration**

9 Defendants have moved for reconsideration pursuant to Fed.R.Civ.P 60(b). Rule 60(b)
10 provides:

11 (b) *Grounds for Relief from a Final Judgment, Order, or Proceeding.* On motion and
12 just terms, the court may relieve a party or its legal representative from a final
13 judgment, order, or proceeding for the following reasons:

14 (1) mistake, inadvertence, surprise, or excusable neglect;
15 (2) newly discovered evidence that, with reasonable diligence, could not have been
16 discovered in time to move for a new trial under Rule 59(b);
17 (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or
18 misconduct by an opposing party;
19 (4) the judgment is void;
20 (5) the judgment has been satisfied, released, or discharged; it is based on an earlier
21 judgment that has been reversed or vacated; or applying it prospectively is no longer
22 equitable; or
23 (6) any other reason that justifies relief.

24 Fed.R.Civ.P 60(b)

25 Defendants, although failing to specify how Rule 60 is satisfied, base their counter
26 motion for reconsideration on the premise that at the June 10, 2013, hearing, the Court postponed
27 the June 11, 2013, 30(b)(6) deposition due to the filing of Plaintiffs' Emergency Motion for
28 Protective Order. To support this assertion, Defendants cite to Docket Nos. 230 and 240. Docket
No. 230 is a Minute Order shortening the briefing deadlines for the motion for protective order to
a Response date of June 5, 2013, and a Reply date of June 7, 2013. Docket No. 240 is a Minute
Order entered on June 28, 2013, eighteen days after the relevant hearing, and it concerns a second

1 protective order brought by Plaintiffs when the parties still could not agree on the scope of the
 2 depositions noticed by AIM. Both minute orders concerned the seven depositions noticed by
 3 AIM during the last 30 days of discovery. The 30(b)(6) deposition noticed by Plaintiffs was not
 4 before the Court when those minute orders were issued.

5 Similarly, the June 10, 2013, hearing did not concern the 30(b)(6) deposition noticed by
 6 Plaintiffs. The June 10, 2013, hearing concerned the protective order brought by Plaintiffs, which
 7 sought to reschedule or prevent the seven depositions unilaterally noticed by AIM on dates when
 8 it was aware Plaintiffs' counsel and witnesses were not available. The 30(b)(6) deposition
 9 noticed by Plaintiffs was only addressed after the Court made its ruling that AIM's depositions
 10 could continue if they were re-noticed for dates and times that would work for all parties. At that
 11 time the Court stated that the 30(b)(6) deposition noticed by Plaintiffs could also be rescheduled
 12 if necessary.⁸ Plaintiffs' counsel then informed the Court that the deposition had already been
 13 rescheduled for June 11, 2013, and that it did not need to be rescheduled. It was only then that
 14 AIM's counsel stated that it would not produce a 30(b)(6) witness on June 11, 2013, because it
 15 believed it already produced a proper 30(b)(6) witness. AIM and Plaintiffs' counsel then began
 16 to argue with one another about why AIM's counsel had not previously informed Plaintiffs'
 17 counsel of the objection. The Court instructed counsel that it was not proper for them to talk to
 18 each other during the hearing and if the parties had a dispute relating the 30(b)(6) deposition
 19 noticed by Plaintiffs, they had to meet and confer on that issue before bringing any dispute to the
 20 Court. The Court made clear it was only ruling on the motion before it, which was Plaintiffs'
 21 motion for protective order. Docket No. 236.

22 Therefore, to indicate that the Court had any involvement whatsoever in the
 23 nonoccurrence of the June 11, 2013, deposition is a complete misrepresentation. Indeed, the
 24 30(b)(6) deposition noticed by Plaintiffs never came before the Court until Plaintiffs filed their
 25 motion to compel. Therefore, the Court's decision to grant Rule 37 sanctions for the June 11,
 26 2013, scheduled deposition was not due to mistake, inadvertence, surprise, excusable neglect,
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28 ⁸This was in the last 2 minutes of the 45-minute hearing. *See* Docket No. 236.

1 newly discovered evidence, misrepresentation or fraud or misconduct by an opposing party.
 2 Further, no other reason exists that justifies relief pursuant to Fed.R.Civ.P. 60(b). Accordingly,
 3 the Court denies Defendants' request for reconsideration.

4 **II. Sanctions**

5 When a Rule 37 motion is granted, the court "must, after giving an opportunity to be
 6 heard, require the party or deponent whose conduct necessitated the motion, the party or attorney
 7 advising the conduct, or both to pay the movant's reasonable expenses incurred in making the
 8 motion, including attorney's fees." FED. R. CIV. P 37(a)(5). However, "the court must not order
 9 this payment if: (1) the movant filed the motion before attempting in good faith to obtain the
 10 disclosure or discovery without court action; (2) the opposing party's nondisclosure, response, or
 11 objection was substantially justified; or (3) other circumstances make an award of expenses
 12 unjust." *Id.*

13 Here, during the July 12, 2013, hearing, the Court granted Plaintiffs' request for sanctions
 14 pursuant to Rule 37, because it granted Plaintiffs' Motion to Compel. The Court instructed
 15 Plaintiffs to specify all sanctions sought and provide the court with documentation for those
 16 sanctions. Additionally, in accordance with Rule 37, the Court gave Defendants an opportunity to
 17 be heard by instructing Defendants to file any objections to Plaintiffs' motion for sanctions
 18 within one week of the filing of Plaintiffs' motion.

19 **A. Good Faith**

20 The first inquiry therefore is whether Plaintiffs attempted in "good faith" to confer with
 21 AIM before filing the motion and requesting court action. "[G]ood faith mandates a genuine
 22 attempt to resolve discovery dispute through nonjudicial means, and conferment requires party to
 23 have had or attempted to have had an actual meeting or conference." *Shuffle Master, Inc., v.*
 24 *Progressive Games Inc.* Et. al., 170 F.R.D 166.

25 Here, the parties met and conferred for an hour and a half on May 2, 2013, after which
 26 Plaintiffs' counsel believed the parties agreed that AIM would work to make Soares more
 27 familiar with the noticed topic areas and competent to testify to those areas at a subsequent
 28 deposition. When the discussed 30(b)(6) deposition did not take place on June 11, 2013, the

1 parties held another meet and confer on or around June 19, 2013. At that time, AIM indicated
 2 that it would not produce a 30(b)(6) witness. On June 24, 2013, AIM sent an email again
 3 indicating that it would not produce a 30(b)(6) witness without leave of court. Therefore,
 4 Plaintiffs attempted in “good faith” to confer with AIM before filing the motion and requesting
 5 court action.

6 **B. Substantial Justification**

7 The second inquiry is whether AIM’s objection to Plaintiffs’ discovery requests was
 8 substantially justified. A losing party on a motion to compel discovery is “substantially justified”
 9 if “reasonable people could differ as to whether the [losing party] must comply [with discovery
 10 requests].” *See Srinivasan v. Devry Institute of Technology*, 53 F.3d 340 (9th Cir. 1995) (citing
 11 *Reygo Pacific Corp. v. Johnson Pump Co.*, 680 F.2d 647, 649 (9th Cir. 1982)(overturned on other
 12 grounds)).

13 Here, AIM argued that its 30(b)(6) witness already been deposed and some of the noticed
 14 categories were overly broad. However, as the Court discussed at length during the July 12, 2013,
 15 hearing, Soares was not a proper 30(b)(6) witness as she clearly was not able to testify to the
 16 majority of the noticed categories. Therefore, the Court finds that reasonable people would not
 17 differ as to whether AIM had to produce a proper 30(b)(6) witness after it was apparent that
 18 Soares was not a proper 30(b)(6).

19 Nevertheless, as Soares was able to testify to some of the noticed topics at her February
 20 22, 2013, deposition, and her deposition was not entirely fruitless, the Court denies the request
 21 for attorney fees relating to that deposition.

22 However, the Court grants the request for costs and fees related to the June 11, 2013,
 23 deposition and the subsequent motion to compel. AIM did not raise its “over-broad” objection
 24 until June 24, 2013, when the proper time to raise its first objection would have been prior to the
 25 February 22, 2013, deposition of Soares. At that time, the parties should have met and conferred
 26 and Plaintiff could have narrowed and clarified the categories if necessary. However, AIM
 27 waited over five months after it was first noticed of the deposition categories to indicate that it
 28 believed the categories were overly broad. AIM has provided no justification for this delay nor

1 has it argued that a reasonable person would believe that it was acceptable to wait five months to
 2 raise an objection in these circumstances. Therefore, the Court finds that AIM's objections to the
 3 motion to compel and the June 11, 2013, deposition were not substantially justified.

4 **C. Other Circumstances**

5 The third and final inquiry is whether other circumstances make an award of fees unjust.
 6 Traditionally, the "other circumstances" exception is only met when an award of fees would
 7 create an unreasonable financial burden on the losing party. AIM has not claimed, nor does the
 8 Court have any information indicating that granting a request for fees would create an
 9 unreasonable financial burden. The award of reasonable fees therefore is not unjust.

10 Plainly, AIM's counsel meets none of the FED. R. Civ. P 37(a)(5) exceptions.

11 Accordingly, the Court grants reasonable fees and expenses to Plaintiffs' counsel.

12 **III. Reasonable Expenses are Calculated Using the "Lodestar" Method**

13 The Court determines whether the amount of a Rule 37 request for attorneys' fees is
 14 reasonable using the two part "lodestar" method. *Intel Corp. v. Terabyte Int'l*, 6 F.3d 614, 622
 15 (9th Cir. 1993) (citing *Hensley v. Eckerhart*, 461 U.S. 424 (1983)). First, the court computes the
 16 "lodestar" figure by multiplying the reasonable hourly rate by the number of hours expended.
 17 *Carpad, Inc. v. Brookstone Co.*, 2005 LEXIS *2 (D. Nev.) (applying the lodestar approach to
 18 calculate attorneys fees awarded to party that prevailed on Rule 37 motion for violation of
 19 existing court order) (citing *Fischer v. SJB-P.D., Inc.*, 214 F.3d 1115, 1119 (9th Cir. 2000)).
 20 Second, the court considers whether to adjust the lodestar figure based on the relevant factors
 21 listed in *Kerr v. Screen Extras Guild, Inc.*, 525 F.2d 67, 70 (9th Cir. 1975). In the District of
 22 Nevada, the Kerr factors have been codified in LR 54-16(b)(3). *Johnson v. Incline Village Gen.*
 23 *Improvement Dist.*, 5 F. Supp. 2d 1113, 1116 (D. Nev. 1998).

24 **A. The "Lodestar" Figure**

25 The "lodestar" figure is calculated by multiplying the reasonable hourly rate by the
 26 number of hours reasonably expended. The reasonableness of the hourly rate is calculated
 27 according to the "prevailing market rates in the relevant community." *Barjon v. Dalton*, 132
 28 F.3d 496, 500 (9th Cir. 1997) (*quoting Blum v. Stenson*, 465 U.S. 886, 895 (1984)). Generally,

1 the relevant community is the forum in which the court sits. *Davis v. Mason County*, 927 F.2d
 2 1473, 1488 (9th Cir. 1991). Here, Las Vegas, Nevada is the relevant community.

3 **1. Hourly Rate**

4 The first inquiry is whether the submitted rate is reasonable in the Las Vegas area. The
 5 established standard is “the rate prevailing in the community for similar work performed by
 6 attorneys of comparable skill, experience, and reputation.” *Chalmers v. City of Los Angeles*, 796
 7 F.2d 1205, 1210-11 (9th Cir. 1986). Here, Plaintiffs’ counsel submitted two affidavits requesting
 8 the Court find the rates of \$180 per partner and of counsel hour, and \$165 per associate hour, is
 9 reasonable. Docket No. 260-1,2. Plaintiffs’ counsel provided no documents to the Court which
 10 verify if the requested amount is reasonable in the local community. However, no counter
 11 affidavit or argument relating to Plaintiffs’ counsel’s hourly rate has been filed by defense.
 12 Plaintiffs’ counsel’s hourly rate was clearly provided in the affidavits of Bruce Kelley and Eron
 13 Cannon, and Defendants failed to address or oppose those rates. Accordingly, the Court
 14 concludes that Defendants do not object to Plaintiffs’ counsel’s hourly rate. Further, the Court,
 15 based on its own familiarity with attorney rates in Las Vegas, concludes that a billing rate of
 16 \$180 per partner and of counsel hour, and \$165 per associate hour is reasonable.

17 **2. Hours Expended**

18 The party requesting fees must next demonstrate that the hours expended are reasonable.
 19 The moving party therefore should provide the Court and opposing party with its relevant billing
 20 statements. *See Roush v. Berosini*, 66 Fed. Appx. 725, 726 (9th Cir. 2003). However, an award
 21 of attorneys’ fees may be based on the affidavits of counsel, so long as they are “sufficiently
 22 detailed to enable the court to consider all the factors necessary in setting the fees.” *Henry v. Gill
 23 Indus., Inc.*, 983 F.2d 943, 946 (9th Cir. 1993); quoting *Williams v. Alioto*, 625 F.2d 845, 849
 24 (9th Cir.1980) (per curiam), *cert. denied*, 450 U.S. 1012, 101 S.Ct. 1723, 68 L.Ed.2d 213 (1981);
 25 *accord Sablan v. Department of Fin. of N. Mariana Islands*, 856 F.2d 1317, 1322 (9th Cir.1988)
 26 (“sufficiently detailed to provide an adequate basis for calculating the award”); *Shakey’s Inc. v.
 27 Covalt*, 704 F.2d 426, 435 (9th Cir.1983) (“ample evidence to support the attorney’s fee award”);
 28 *Manhart v. City of Los Angeles*, 652 F.2d 904, 908 (9th Cir.1981) (“sufficiently detailed to

1 provide a basis for the award”), *vacated on other grounds*, 461 U.S. 951, 103 S.Ct. 2420, 77
 2 L.Ed.2d 1310 (1983). The Court may then evaluate the fee amount requested and determine if the
 3 hours expended are reasonable for the work done. See *Henry*, 983 F.2d at 946.

4 Here, the affidavits of Bruce Kelley and Eron Cannon are sufficiently detailed to enable
 5 the Court to consider all factors necessary in setting fees. The affidavits disclose the nature of the
 6 services rendered in connection with unavailing efforts to obtain a proper 30(b)(6) witness, the
 7 amount of attorney time so consumed by each attorney, and the rates at which this time was
 8 billed to the client. Additionally, Defendants have not objected to the hours expended as listed in
 9 the affidavits.

10 Plaintiffs’ counsels’ affidavits request a total of \$7,482.10 for fees incurred as a result of
 11 their efforts to obtain a proper 30(b)(6) witness. However, \$1,614.10 of the requested fees relate
 12 to the February 22, 2013, deposition which, as discussed above, will not be included in the
 13 calculation of sanctions.

14 Next, Plaintiffs seek compensation for the hours expended in the meet and confer
 15 process. According to the affidavit of Eron Cannon, Plaintiffs spent 2.3 partner hours preparing
 16 for and attending the meet and confer. The Court finds that 2.3 hours is a reasonable amount to
 17 expend on the meet and confer efforts in these circumstances and, therefore, the Court will not
 18 deduct hours from these hours submitted.

19 As to the June 11, 2013, deposition which never occurred, Plaintiffs seek 2.5 partner
 20 hours of compensation. However, the deposition never occurred and, as Plaintiffs have pointed
 21 out numerous times in their motions relating to this matter, the deposition notice sent for the June
 22 11, 2013, deposition, was basically identical to the deposition notice sent for the February 22,
 23 2013, deposition. The Court finds that it is unlikely that Plaintiffs spent 2.5 hours changing the
 24 date on the deposition notice. Accordingly, the Court will deduct 2.5 hours from the hours
 25 submitted.

26 Concerning the Motion to Compel, Plaintiffs seek 3.7 partner hours and 9.6 associate
 27 hours. According to the affidavit of Eron Cannon, Dylan Todd spent 3.5 hours drafting the
 28 motion and 6.1 hours drafting the reply, and Eron Cannon spent 2.2 hours drafting the motion

1 and 1.5 hours drafting the reply. Defendants have not objected to these hours expended nor is
 2 there any other apparent reason why these hours might be unreasonable. Accordingly, the Court
 3 will not deduct hours from these hours submitted.

4 Finally, for the July 12, 2013, hearing, Plaintiffs request 2.4 hours for Eron Cannon's
 5 preparation and attendance, and 4.4 hours⁹ for Bruce Kelley's preparation and attendance, for a
 6 total of 6.8 partner hours. Defendants have not objected to these hours expended nor is there any
 7 other apparent reason why these hours might be unreasonable. Accordingly, the Court will not
 8 deduct hours from these hours submitted.

9 In sum, the Court has deducted all fees related to the February 22, 2013, deposition and
 10 the June 11, 2013, deposition. Although the Plaintiffs did not submit their billing statements,
 11 these reductions are discoverable without the billing statements themselves. See *Roush*, 66 Fed.
 12 Appx. at 726. Additionally, any doubts the Court may have had regarding the sufficiency of the
 13 documentation submitted in support of the fee application have been removed by awarding less
 14 than half of the amount of fees requested by Plaintiffs. *Id.*

15 Based on multiplying the reasonable partner hourly rate of \$180 by the reasonable partner
 16 hours of 12.8 (2.3 + 3.7 + 6.8) and adding it to the reasonable associate hourly rate of \$165 by the
 17 reasonable associate hours of 9.6, the reasonable "lodestar" figure is \$3,888.

18 **B. Kerr Factors**

19 The second step in the inquiry is whether the lodestar figure should be adjusted based on
 20 the *Kerr* factors. *See supra.* at 3. The *Kerr* factors are: (1) the time and labor required; (2) the
 21 novelty and the difficulty of the questions involved; (3) the skill required to perform the legal
 22 service properly; (4) the preclusion of other employment; (5) the customary fee; (6) whether the
 23 fee is fixed or contingent; (7) time limitations imposed by the client or circumstances; (8) the
 24 amount involved and the results obtained; (9) the experience, reputation, and ability of the
 25 attorney; (10) the "undesirability of the case; (11) the nature and length of the professional

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 27 ⁹The affidavit of Eron Cannon states that Bruce Kelley spent 4.6 hours preparing and
 28 attending the hearing. However, Bruce Kelley states in his affidavit that he spent 1.8 hours preparing
 on July 11, 2013, and 2.6 hours preparing for and attending the hearing on July 12, 2013. This results
 in a total of 4.4 hours.

1 relationship with the client; and (12) award in similar cases. *Kerr*, 525 F.2d at 70; *see also* LR
2 54-16. The Court has considered the relevant *Kerr* factors and finds that legal and factual issues
3 in this case do not warrant an adjustment to the “lodestar” figure in either direction.

4 **C. Party Responsible to Pay Fees**

5 Plaintiffs ask the Court to award sanctions against both Defendant AIM and AIM’s
6 Counsel, Karen Ross. Docket No. 260, at 4 and 9. The Court finds that the facts of this case show
7 that both Aim and its counsel, Ms. Ross, were responsible for the actions that caused Plaintiffs to
8 have to engage in the meet and confer, and to file the motion to compel. Therefore, the Court
9 orders that sanctions are awarded against both Aim and its counsel.

10 **CONCLUSION**

11 Based on the foregoing, and good cause appearing therefore,

12 IT IS HEREBY ORDERED that Plaintiffs’ Motion for Fees and Costs Pursuant to the
13 Court Order (Doc. No. 258) Granting Sanctions for Motion to Compel (#260) is **GRANTED**.

14 IT IS FURTHER ORDERED that Plaintiffs are awarded the sum of \$3,888 in attorney’s
15 fees and costs due forthwith.

16 IT IS FURTHER ORDERED that Defendant AIM and AIM’s counsel, Karen Ross, shall
17 be jointly and severally responsible for the total amount of the award.

18 IT IS FURTHER ORDERED that Defendant AIM’s Counter Motion for Reconsideration
19 (#264) is **DENIED**.

20 DATED this 15th day of August, 2013.

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22 
23 **NANCY J. KOPPE**
24 **United States Magistrate Judge**

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